IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

SUNSTONE INFORMATION DEFENSE, INC., Plaintiff, v. INTERNATIONAL BUSINESS MACHINES CORPORATION Defendant.	Case No. 6:20-cv-1033-ADA **JURY TRIAL REQUESTED**

OMNIBUS ORDER REGARDING PRE-TRIAL MOTIONS

After considering the briefing and the oral arguments at the July 28, 2022 pretrial conference, the Court hereby memorializes the following rulings on the pending motions and motions *in limine* for the above-captioned case:

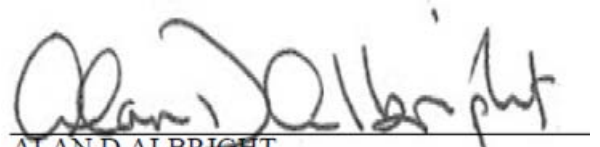| Moving Party	ECF No.	Title	Ruling
SunStone	59	*Daubert* Motion to Exclude Kennedy Opinions	**Denied**
SunStone	61	Motion for Partial Summary Judgment Regarding Affirmative Defenses	**Granted-in-Part:** All affirmative defenses at issue stricken except noninfringement, invalidity, and prosecution history estoppel/disclaimer. Prosecution history may be used if relevant to understanding the claims.
SunStone	62	Motion for Partial Summary Judgment for Divided Infringement	**Denied**
SunStone	63	*Daubert* Motion to Exclude Striegel Opinions	**Denied**, but opinions "under SunStone's interpretation" must be disclosed and tethered
IBM	64	Motions for Summary	**Granted-in-Part**. *See* sub-parts in next five rows.
IBM	64 (1)	Motion for Summary Judgment regarding Determining a Prediction	**Granted-in-Part** as to noninfringement by the username and password itself. **Denied** as to other infringement theories.
IBM	64 (2)	Motion for Partial Summary Judgment regarding Mobile SDK's non-use of Presentation Information	**Granted**
IBM	64 (3)	Motion for Partial Summary Judgment regarding Non-Infringement of Pinpoint Verify and Pinpoint Assure	**Denied**, but IBM may move for a directed verdict if there is no evidence that these products perform the asserted method as part of a suite.
IBM	64 (4)	Motion for Partial Summary Judgment regarding Non-Infringement of Claim 39 of the '870 Patent	**Denied**

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Moving Party	ECF No.	Title	Ruling
IBM	64 (5)	Motion for Partial Summary Judgment regarding Banco Santander and Santander Bank's Non-Use and Exclusion from Damages Base	**Denied**
IBM	65 (1)	*Daubert* Motion to Exclude Cole Opinions	**Denied**
IBM	65 (2)	*Daubert* Motion to Exclude LaMotta Opinions	**Granted** as to the F5 litigation **Denied** otherwise

MOTIONS *IN LIMINE*

Motion	Ruling
SunStone MIL No. 1: References to attorney compensation, litigation funding, or contingency arrangements.	Granted
SunStone MIL No. 2: Derogatory terms, such as patent troll, patent terrorist, etc.	Granted as to derogatory terms
SunStone MIL No. 3: Untimely testimony of IBM corporate witness Tom Campanelli.	Denied
SunStone MIL No. 4: References to objections to discovery requests or other pre-trial materials.	Granted
SunStone MIL No. 5: Prior art not specifically listed in IBM's Final Election of Asserted Prior Art.	Denied, but prior art is limited to disclosure in expert reports.
SunStone MIL No. 6: Evidence, testimony, argument, or references to any matters not timely disclosed under the Federal Rules of Civil Procedure, the Court's OGP or Local Rules.	Granted
SunStone MIL No. 7: Argument of non-infringement based on practicing the prior art.	Granted-in-Part, with caveats on the record.
SunStone MIL No. 8: Comparing the Accused Products to preferred embodiments in the Asserted Patents.	Granted; IBM may approach the bench if needed in response to SunStone.

Motion	Ruling
SunStone MIL No. 9: Evidence, testimony, argument, or references in any manner inconsistent with the Court's claim construction or that questions or disparages it.	Granted
IBM MIL No. #1: Preclude Medvivodic: IBM Not Practicing IBM Prior Art.	Granted
IBM MIL No. #2: Exclude Reference to the Amount of the Trusteer Acquisition.	Denied
IBM MIL No. #3: Exclude Reference to SS's Allegations of Patent Infringement Against F5 Networks, or Any Suggestion That Other Companies "Use" the Patents.	Granted
IBM MIL No. #4: Exclude Evidence or Argument That Pinpoint JavaScript Snippets Indicate Behavioral Biometrics is Enabled.	Denied, IBM may object to the extent testimony is not in expert reports.
IBM MIL No #5: Former IBM Employee Nick Coleman and Any Alleged Pre-Suit Notice.	Granted
IBM MIL No. #6: Exclude Evidence or Argument That SunStone Invented Mouse Biometrics.	Granted
IBM MIL No. #7: Preclude Medvidovic: Presumption of Nexus for Secondary Considerations.	Granted-in-Part; dependent on IBM's assertions at trial.
IBM MIL No. #8: Exclude Evidence or Argument Regarding Willful Infringement.	Granted, but SunStone may approach at trial.
IBM MIL No. #9: Exclude Expert Testimony Not Timely Disclosed in Expert Reports.	Granted
IBM MIL No. #10: Exclude Document Produced After Discovery.	Granted
IBM MIL No. #11: Analytical Gap Between the Evidence and Dr. Cole's Opinions.	Denied
IBM MIL No. #12: Exclude SS's Unaccepted Offer to Barracuda.	Denied
IBM MIL No. #13: Preclude Comparison of IBM's Damages Expert's Ultimate Damages Opinions Relative to the Amount IBM Has Spent in Litigation.	Granted-in-Part as to the amount IBM has spent in litigation fees; the parties may discuss expert compensation.
IBM MIL No. #14: Exclude Reference to the *SRI v. Cisco* Verdict.	Denied

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SIGNED this 1st day of August, 2022.

ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE